

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re) Case No. 17-11028-B-11
)
PACE DIVERSIFIED CORPORATION,)
)
Debtor.)

PACE DIVERSIFIED CORPORATION,) Adv. Proc. #18-01006-B
a California corporation;)
DARK ROCK, LLC, a California)
limited liability company,)
Plaintiffs,)

v.)

MACPHERSON OIL COMPANY,)
a California corporation;)
SANDRA BRAUCHT, an individual,)
Defendants.)

MACPHERSON OIL COMPANY, a)
California corporation,)
Counter-Plaintiff,)

v.)

PACE DIVERSIFIED CORPORATION,)
A California corporation;)
DARK ROCK, LLC, a California)
limited liability company,)
Counter-Defendants.)

**MEMORANDUM RULING ON PRIORITY OF CONTESTED INTERESTS
AND ORDER REGARDING FURTHER PROCEEDINGS**

INTRODUCTION

Upon his death in 1929, Louis V. Olcese was described by a
Central Valley newspaper as "one of the wealthiest men in Kern

1 County.”¹ He was the son of Italian immigrants and moved to
2 Bakersfield from Northern California. He founded the Ardizzi-
3 Olcese Bank.² His wealth grew as he bought acres of land, which
4 he ranched.³ Among the acreage he owned was a portion of the
5 Round Mountain Oilfield in Kern County. This case is about those
6 entitled to lease or own Olcese’s interest in a section of that
7 field.

8 Two competing oil companies (one of which is a reorganized
9 chapter 11 debtor) claim priority in the mineral interests in a
10 portion of the section. Applying the California recording
11 statutes to the facts in this case, the court determines that
12 both oil companies have priorities to different interests. The
13 specifics are set forth below.⁴

14
15 **I**

16 **A.**

17 The Round Mountain Oilfield is located northeast of
18 Bakersfield, in Kern County, California. One of the sections in
19 that oil field is Section 17. Stipulated Fact (“SF”) ¶ 5.⁵ The
20 section contains 640 acres. The oil and gas rights in the
21 ///

22 ¹ Jack Hardisty, *The Olcese House: A Home with a lot of Stories*, The
23 Bakersfield Californian (Sept. 9, 2016) [https://www.bakersfield.com/archives/
the-olcese-house-a-home-with-a-lot-of-stories/article_f56f4083-835f-5d75-
891b-437a69e38b25.html](https://www.bakersfield.com/archives/the-olcese-house-a-home-with-a-lot-of-stories/article_f56f4083-835f-5d75-891b-437a69e38b25.html) (visited Dec. 1, 2022).

24 ² *Id.*

25 ³ *Id.*

26 ⁴ The following are the court’s findings of fact and conclusions of law
27 under Federal Rule of Civil Procedure 52 (Federal Rule of Bankruptcy
28 Procedure 7052). Should it be determined that a factual finding is a
conclusion of law, the court adopts the same as a conclusion of law, and
vice-versa.

⁵ The Stipulated Facts are set forth in Article III of the Joint Pre-
Trial Order (“JPO”) at 2:10-16:5, Doc. #208.

1 northwest, northeast, and southeast quarters of Section 17 are
2 the subject of this action.⁶

3 Reorganized debtor Pace Diversified Corporation ("Pace
4 Diversified") and its affiliate, Dark Rock, LLC ("Dark Rock"),
5 claim they hold 100% of the oil and gas rights in the relevant
6 quarters of Section 17.⁷ Pace Diversified is in the business of
7 producing oil, which it then sells. All of Pace Diversified's
8 oil operations are in Kern County. Trial Tr. ("TT") 33:2-12,
9 Docs. ##245-46. Dark Rock is affiliated with Pace Diversified
10 because the president of Pace Diversified, Duane Roach, is the
11 managing member of Dark Rock.⁸ TT 34:25-27.

12 It is undisputed that early in the twentieth century, the
13 mineral rights to Section 17 were owned by Louis V. Olcese. SF
14 ¶ 15. Upon his death, his 100% mineral interest in Section 17
15 was split between eight heirs, and subsequently divided further
16 between many descendants. SF ¶ 16. Five interests are disputed
17 here.

18 Before July 1, 1999, Pace Diversified's predecessor, Pace
19 Western Corporation ("Pace Western"), was provided with a list
20 of heirs of Louis Olcese. TT 35:27-36:26, 37:20-23. It is
21 undisputed that Pace Western Corporation leased a portion of the
22 northeast quarter of Section 17 from the Olcese heirs. Joint Ex.
23 ("JX") Y; TT 36:11-20. In 2001, Pace Western Corporation
24 assigned the original Olcese lease to Pace and the assignment
25

26 ⁶ The oil and gas rights of the southwest quarter of Section 17 are not
in dispute.

27 ⁷ Pace Diversified Corporation and Dark Rock, LLC, will collectively be
referred to as "Pace" unless otherwise indicated.

28 ⁸ Dark Rock does not engage in oil production, but rather has assets
consisting of a rental house and certain oil royalties.

1 was recorded in January 2002. JX Z; SF ¶¶ 19-20. Two addenda
2 were later added. *Id.* ¶¶ 19-21; TT 44:7-25; JX EE. Through the
3 addenda, Pace claims its oil and gas lease interests expanded to
4 the rest of Section 17. TT 43:3-20; SF ¶¶ 19-21; JPO 1:16-19.

5 MacPherson Oil Company ("MOC") also produces oil from the
6 Round Mountain Oilfield. MOC and Pace have an adversarial
7 history. MOC sued Pace in 2011 concerning Pace's oil operation
8 within Section 17. TT 46:22-48:4, 48:25-27. In November 2015,
9 Pace sued MOC in the Kern County Superior Court, Case No. BCV-
10 15-101562-DRL ("KC Action"). SF ¶ 7. In this second suit, Pace
11 claimed that MOC "watered out" two Pace production wells located
12 in Section 17 and alleged MOC's water disposal from MOC's nearby
13 oil operations caused the damage. *Id.* ¶ 8; Defs.' Ex. ("DX")
14 752. MOC contended Pace in fact mis-drilled its wells in wrong
15 locations which in turn caused the wells to produce only water.
16 SF ¶ 9. Pace maintained throughout the KC Action that it was the
17 mineral lease holder and operator of the Olcese lease. DX 752.

18 MOC, wanting to mitigate its damage exposure, retained an
19 independent oil and gas brokerage firm, Maverick Petroleum, Inc.
20 ("Maverick"), to assist in conducting a title review to
21 determine the extent of Pace's interests in Section 17. TT
22 136:26-138:18. MOC surmised that Pace had not leased
23 approximately 20% of the mineral rights in Section 17. *Id.* at
24 137:19-22. MOC's counsel gave Cliff Clement (the then vice-
25 president of Land and Real Estate for MOC) a list of Section 17
26 interests that MOC should acquire to mitigate its damages in the
27 KC Action. TT 161:10-162:28. The Maverick employee charged with
28 acquiring most of the alleged unleased interests was Yvonne

1 Hicks. TT 229:22-230:5, 230:20-22. Both Cliff Clement and Yvonne
2 Hicks are "landmen."⁹ Neither Cliff Clement nor Yvonne Hicks
3 independently reviewed any title documents before attempting to
4 acquire the alleged unleased interests. TT 162:13-15, 162:25-28,
5 163:21-26, 230:13-19.

6 MOC's efforts began in October 2016. Cliff Clement and
7 Yvonne Hicks set about to either lease or purchase the alleged
8 "unleased" mineral interests and mineral rights in Section 17.

9 Concurrently, MOC filed a cross-complaint against Pace in
10 the KC Action alleging that Pace had not leased 100% of the
11 mineral rights in Section 17. SF ¶ 7. The interests in dispute
12 are identified by the parties and the court as (1) the Black
13 interest, (2) the Braucht or Cramer interest, (3) the Solomon
14 interest, (4) the Stewart interest, and (5) the Stanford or
15 Simonson interest. More about those interests later.

16 Meanwhile, on March 23, 2017, Pace Diversified filed a
17 Chapter 11 Petition. Bankr. Case No. 17-11028 ("Bankr.")
18 Doc. #1. Pace Diversified confirmed the *Second Amended Plan of*
19 *Reorganization* (the "Plan") on December 28, 2017. Bankr.
20 Docs. ##398-99. Under the Plan, Pace Diversified is continuing
21 to operate all of its mineral interests including those in
22 Section 17. The Plan also authorizes Pace Diversified to pursue
23 all necessary litigation to enforce its rights. Before the Plan
24 was confirmed, Pace Diversified and MOC settled their
25 differences over Pace's claimed damage to its oil operations on

26 ⁹ Landman is a job title for a land management professional. They are
27 ordinarily part of a team who negotiates and interacts with landowners to
28 acquire mineral lease agreements. *What is a Landman*, American Association of
Professional Landmen, <https://www.landman.org/about/who-we-are/what-is-a-landman> (visited Dec. 1, 2022).

1 Section 17. The settlement was approved by the Bankruptcy Court.
2 Bankr. Doc. #245. The settlement provides that both MOC and Pace
3 retain their ownership interests (whatever they may be) in
4 Section 17. *Id.*

5 This adversary proceeding was filed February 5, 2018.
6 Compl., Doc. #1. Pace Diversified and Dark Rock ask for a
7 declaration that their disputed rights and claims to the mineral
8 interests are superior to any rights or claims of defendant and
9 counterclaimant MOC. *Id.* MOC seeks a declaration that it holds
10 superior legal title to the mineral interests in dispute.
11 Answer, Doc. 7. MOC also claims it is a co-tenant of Pace or
12 Dark Rock with respect to the mineral interests and is entitled
13 to an accounting as to the oil that has been produced from the
14 subject property.¹⁰ JPO 1:11-22; 92:21-94:2. The court has
15 bifurcated the issue of any accounting between Pace and/or Dark
16 Rock and MOC for a second phase of trial. JPO 1:23-26. This
17 ruling only relates to priorities of interests. This ruling does
18 not order an accounting or find that any party owes the other
19 royalties or other damages.

20 **B.**

21 Pace contends that it acquired each of the five interests
22 disputed here before MOC acquired their interests. Pace also
23 claims that its interests precede any MOC interests because
24 recorded documents in the official records gave direct or
25 indirect notice of Pace's interests. MOC was obligated to
26 inquire about the state of title to the disputed interests, says

27 ¹⁰ Sandra Braucht did not file an Answer, but her interest was leased to
28 Maverick on or about November 21, 2016, which was then assigned to MOC. Joint
Stmt. of Undisputed Facts ¶¶ 63-64, Doc. #96.

1 Pace, based upon the facts and circumstances. Pace contends that
2 if a proper inquiry had been made, MOC would have known of the
3 unrecorded deeds or interests by which Pace claims priority.
4 Alternatively, Pace claims that MOC, upon proper inquiry, would
5 have learned that the instruments Pace did record were intended
6 to describe some or all of the disputed interests MOC now
7 claims.

8 Pace asserts that, in 2013, it transferred some of the
9 disputed interests to its affiliate, Dark Rock. This is
10 undisputed. SF ¶¶ 33, 48.

11 MOC contends that its acquisition of the disputed mineral
12 interests has priority over those claimed by Pace because Pace
13 did not record any instruments in the official records showing
14 Pace's ownership or other interests in those acquired by MOC.
15 Accordingly, MOC contends its acquired interests have priority
16 over Pace's interests.

17 There is no dispute that Pace either owns or has leased
18 most of the interests in Section 17. The dispute involved here
19 relates to approximately 20% of the interests Pace claims.

20 **C.**

21 The United States District Court for the Eastern District
22 of California has jurisdiction over this adversary proceeding
23 pursuant to 28 U.S.C. § 1334(b) in that this is a civil
24 proceeding arising in and related to a case under Title 11 of
25 the United States Code. The District Court has referred this
26 matter to this court pursuant to 28 U.S.C. § 157(a). The
27 complaint in this adversary proceeding is a "core" proceeding
28 under 28 U.S.C. § 157(b) (2) (A), (B), and (O). The parties have

1 all consented to the entry of a final order or judgment in this
2 matter by this court if the claims alleged are "non-core." JPO
3 2:8-9.

4 5 II

6 Property rights are governed by state law. *Butner v. United*
7 *States*, 440 U.S. 48, 54-55, 99 S. Ct. 914, 917-18 (1979),
8 *superseded in part on other grounds*. To determine whether a
9 transfer has occurred, a bankruptcy court looks at state law.
10 *Finalco, Inc. v. Roosevelt (In re Roosevelt)*, 176 B.R. 534, 537
11 (B.A.P. 9th Cir. 1985), *aff'd*, 87 F.3d 311 (9th Cir. 1996),
12 *overruled in part by Murray v. Bammer (In re Bammer)*, 131 F.3d
13 788 (9th Cir. 1997).

14 The royalty interest in an oil lease reserved by a
15 landowner is an interest in real property. *La Laguna Ranch Co.*
16 *v. Dodge*, 18 Cal. 2d 132, 135, 114 P.2d 351, 353 (1941). So is
17 an oil lease. *See, Payne v. Callahan*, 37 Cal. App. 2d 503, 509,
18 99 P.2d 1050, 1052 (1940) (oil lease of indefinite duration).
19 The interests here are those of oil leases encumbering portions
20 of Section 17 in the Round Mountain Oilfield. Priority of
21 interests between Pace and MOC are questions of property rights,
22 which under *Butner* are determined by state law.

23 A discussion of state law follows.

24 A.

25 Under California law, a conveyance of real property must be
26 "recorded in order to be valid against a subsequent purchaser of
27 the same property." *Robertson v. Peters (In re Weisman)* 5 F.3d
28 417, 420 (9th Cir. 1993); Cal. Civ. Code ("CC") § 1214. Thus, "a

1 bona fide purchaser who records prevails over a prior transferee
2 who failed to record." *In re Probasco*, 839 F.2d 1352, 1353 (9th
3 Cir. 1988). However, CC § 1217 provides: "[a]n unrecorded
4 instrument is valid as between the parties thereto and those who
5 have notice thereof."

6 The rights of a bona fide purchaser are defined by state
7 law. *In re Tleel*, 876 F.2d 769, 772 (9th Cir. 1989). To be a
8 bona fide purchaser generally requires good faith, payment of
9 valuable consideration, no notice of another party's interest in
10 the property, and duly recording that person's interest. *Gates*
11 *Rubber Co. v. Ulman*, 214 Cal. App. 3d 356, 364, 262 Cal. Rptr.
12 630, 635 (1989); *Schoenmann v. De Leon (In re Whiting)*, 311 B.R.
13 539 (Bankr. N.D. Cal. 2004). Good faith requires that the buyer
14 have neither knowledge nor notice of the competing claim. *Triple*
15 *A Mgmt. Co. v. Frisone*, 69 Cal. App. 4th 520, 530, 81 Cal. Rptr.
16 2d 669, 675-76 (1999).

17 "Notice" with respect to bona fide purchaser status in
18 California generally breaks down into three types: actual,
19 constructive, and inquiry.¹¹ Actual notice is obvious—the
20 subsequent purchaser knows of the prior interest. But actual
21 notice may attach if a subsequent purchaser or encumbrancer is
22 told of the prior interest, hears it discussed, or sees the
23 document referring to the interest. *See, Beverly Hills Nat'l*
24 *Bank & Tr. Co. v. Seres*, 76 Cal. App. 2d 255, 172 P.2d 894
25 (1946). For example, a prudent purchaser is charged with
26 knowledge of information that a reasonable inspection of the

27 ¹¹ The Ninth Circuit treats inquiry and constructive notice as related,
28 if not identical, doctrines. *In re Prof'l Inv. Props.*, 955 F.2d 623, 628 (9th
Cir. 1992); *Weisman*, 5 F.3d at 420.

1 property would have revealed. *Weisman*, 5 F.3d at 420. "Actual
2 notice is defined as express information of a fact while
3 constructive notice is that which is imputed by law." *In re*
4 *Marriage of Cloney*, 91 Cal. App. 4th 429, 436, 110 Cal. Rptr.
5 615, 621 (2001), quoting CC § 18 (quotations omitted).

6 Constructive notice of a lien or other interest in property
7 arises from the proper recording of that interest. *Cloney*, 91
8 Cal. App. 4th at 437, 110 Cal. Rptr. at 621. The law
9 "conclusively presumes that a party acquiring property has
10 notice of the contents of a properly recorded document affecting
11 the property." *Hochstein v. Romero*, 219 Cal. App. 3d 447, 452,
12 268 Cal. Rptr. 202, 204 (1990); see, CC § 1213 (recorded
13 conveyance of real property provides constructive notice to
14 subsequent purchasers). A bona fide purchaser of real property
15 has constructive notice of only those matters that could be
16 located by a diligent title search. *Dyer v. Martinez*, 147 Cal.
17 App. 4th 1240, 1242, 54 Cal. Rptr. 3d 907, 908 (2007). Absent
18 suspicious or other circumstances warranting a reasonable
19 investigation, a recorded document does not put a potential
20 purchaser on notice of the content of a referenced unrecorded
21 document. *Am. Med. Int'l, Inc. v. Feller*, 59 Cal. App. 3d 1008,
22 1020, 131 Cal. Rptr. 270, 278 (1976); *Gates Rubber Co.*, 214 Cal.
23 App. 3d at 365, 262 Cal. Rptr. at 635-36; CC § 19 ("Every person
24 who has actual notice of circumstances sufficient to put a
25 prudent person upon inquiry as to a particular fact has
26 constructive notice of the fact itself in all cases in which, by
27 prosecuting such inquiry, he or she might have learned that
28 fact.").

1 This leads to the third type of notice: inquiry notice. A
2 subsequent purchaser may also have constructive notice of a fact
3 affecting his or her property rights when the purchaser "has
4 knowledge of circumstances which, upon reasonable inquiry, would
5 lead to that particular fact." *Cloney*, 91 Cal. App. 4th at 437,
6 110 Cal. Rptr. at 621. "If the purchaser neglects to prosecute
7 such inquiry diligently he may not be awarded the standing of a
8 *bona fide* purchaser." *Asisten v. Underwood*, 183 Cal. App. 2d
9 304, 310, 7 Cal. Rptr. 84, 87 (1960), quoting *Rabbit v.*
10 *Atkinson*, 44 Cal. App. 2d 752, 757, 113 P.2d 14, 17 (1941)
11 (quotation omitted).

12 Although a purchaser may rely on the recorded chain of
13 title, the purchaser may not "ignore information that comes to
14 him from *outside* the recorded chain of title, to the extent such
15 information puts him on notice of information that reasonably
16 brings into question the state of title reflected in the
17 recorded chain of title." *Triple A Mgmt.*, 69 Cal. App. 4th at
18 531, 81 Cal. Rptr. 2d at 676 (emphasis in original). But the
19 fact that a potential subsequent interest holder searches and
20 evaluates the record through an escrow or title agent does not
21 in any manner diminish his right to rely on the state of record
22 title. *Id.*; see, *First Fid. Thrift & Loan Ass'n. v. All. Bank*,
23 60 Cal. App. 4th 1433, 1445, 71 Cal. Rptr. 2d 295, 303 (1998)
24 (lender's inquiry to borrower's bank to determine competing loan
25 status instead of directly to competing lender deemed
26 sufficient).

27 Subsequent purchasers can rely on the face of properly
28 recorded documents subject to very limited exceptions. Reliance

1 on the recorded documents alone may not be appropriate if the
2 document is so ambiguous on its face as to leave room for a
3 reasonable difference of opinion as to what was granted *Buehler*
4 *v. Or.-Washington Plywood Corp.*, 17 Cal. 3d 520, 529, 551 P.2d
5 1226, 1232 (1976). Alternatively, the recorded document must
6 contain qualifying words sufficient to cast reasonable doubt on
7 what was intended to be granted. If either circumstance exists,
8 priority may be up to the courts. *Id.*

9 California law gives some guidance as to the qualities of a
10 "prudent purchaser." It is someone shrewd in the management of
11 practical affairs and whose conduct is marked by wisdom,
12 judiciousness, or circumspection. *See, Probasco*, 839 F.2d at
13 1356. Such a purchaser will be charged with knowledge of (1) the
14 nature of the property; (2) its current use; (3) the identities
15 of the persons occupying it; (4) the relationship among them;
16 and (5) the relationship between those in possession and the
17 person whose purported interest in the property the purchaser
18 intended to acquire. *Id.*

19 A prospective purchaser is on notice to inquire if there is
20 clear and open possession of real property by someone other than
21 the party on title. This constitutes constructive notice to the
22 subsequent purchaser, requiring such purchaser to inquire into
23 the possessor's interest. *Id.* at 1354. But "there is no duty to
24 inquire upon a subsequent purchaser regarding any unknown claims
25 or interest by a person in possession of real property when the
26 occupants' possession is consistent with the record title."
27 *Weisman*, 5 F.3d at 421.

28 ///

B.

These factual questions raise the issue of who has the burden of proof. The general rule places the burden of proof upon a person claiming bona fide purchaser status to present evidence that he or she acquired an interest in the property without notice of the prior interest. *Gates Rubber Co.*, 214 Cal. App. 3d at 366 n.6, 262 Cal. Rptr. at 636 n.6; *First Fid. Thrift & Loan Ass'n.*, 60 Cal. App. 4th at 1442, 71 Cal. Rptr. 2d at 301. But a party claiming an equitable interest has the burden of proof to show due and sufficient notice to the defendant of matters outside the record title. *Kabayan v. Yepremian*, 190 B.R. 389, 395 (C.D. Cal. 1995), quoting *Kowalsky v. Kimberlin*, 173 Cal. 506, 510-11, 160 P. 673, 674 (1916). To be sufficient, notice must be precise and complete enough to put the defendant upon his guard. *Id.*; see also, *Weisman* 5 F.3d at 421 ("whether the circumstances are sufficient to require inquiry as to

1 another's interest in property for the purposes of [CC §] 19 is
2 a question of fact, even where there is not dispute over the
3 historical facts.").

4 With these concepts in mind, we analyze the five disputed
5 interests involved here.

7 **III**

8 **A.**

9 The Black interest is 1.141666% of the oil and gas rights
10 of Section 17 that were conveyed to Madelon E. Black in 1986. SF
11 ¶ 76. Pace Diversified obtained the Black interest and assigned
12 its interest to Dark Rock. JX KK.

13 The parties agree that the dispute relates to the
14 succession of Madelon Black's interest. JPO 53:13-18, 54:15-
15 55:16; SF ¶ 14. Her interest was a percentage throughout Section
16 17. JX T. Madelon Black signed the original Olcese lease dated
17 July 1, 1999. JX Y. Madelon Black also signed the 2009 addendum.
18 Pls.' Ex. ("PX") 25. But the addendum was not recorded. Pace
19 paid royalties based upon Madelon Black's interest. TT 40:21-24.
20 Pace makes two claims to priority to the Black interest.

21 First, Pace claims that MOC had actual and constructive
22 notice of their prior interest because the original Olcese lease
23 was recorded in the Official Records of Kern County. JPO 33:10-
24 34:17. In addition, Pace claims that even though the addendum
25 was not recorded, MOC failed to make a diligent inquiry before
26 acquiring the Black interest from Maverick between August and
27 November of 2017. *Id.* at 34:18-22. Pace argues that CC § 19 and
28 related authorities support that, if anything, the extent of the

1 Black heirs' interests was ambiguous. MOC should not interpret
2 any ambiguity in the record in its favor. Pace claims that MOC
3 could not rely on record title because Mr. Clement and Ms. Hicks
4 did not conduct due diligence by checking original documents.

5 Second, Pace claims that after Madelon Black's death in
6 April 2007, her successor, Ralph Black, signed a Deed of Mineral
7 Interests in September 2007 and recorded on March 6, 2012. JX
8 II, LL; SF ¶ 80. Pace was permitted to rely upon Ralph Black's
9 authority to act on behalf of Madelon Black's heirs under Cal.
10 Prob. Code ("PC") §§ 18100 and 18102.

11 Pace also claims that the assignment of the interest to
12 Dark Rock referenced the Deed of Mineral Interest and MOC was
13 therefor on notice. JPO 34:16-17; JX II.

14 In response, MOC claims three bases to priority. First, Ms.
15 Hicks of Maverick entered into the leases with heirs Daniel,
16 Karen, and Andrew Black, and Barbara Ann Cross recorded in
17 August of 2017. JX XX, YY, ZZ, BBB; SF ¶ 83. MOC claims that no
18 one told Ms. Hicks they were receiving royalties from Pace or
19 that they sold their interests. TT 221:27-222:12.

20 Second, MOC claims that, since the addendum signed by
21 Madelon Black in 2009 was never recorded, they were not on
22 inquiry notice of the addendum signed by Madelon Black. JPO
23 42:26-43:3.

24 Third, MOC claims that the Deed of Mineral Interests signed
25 by Ralph Black was only in his individual capacity and not as a
26 trustee or other successor to Madelon Black. *Id.* at 43:3-7.

27 The court agrees with MOC regarding the Black interest.

28 ///

1 First, Madelon Black's signature on the 2009 lease addendum
2 was unrecorded. JX EE. There is no evidence of MOC knowingly
3 ignoring what was in the records. Ms. Hicks testified she had no
4 contrary knowledge from the Black heirs. TT 221:27-222:12.

5 Second, the Deed of Mineral Interests signed by Ralph Black
6 was as to his individual interest and as to his sole and
7 separate property. There was no ambiguity in that deed nor
8 qualifying language. *See, Buhler*, 17 Cal. 3d at 529, 551 P.2d at
9 1232. The assignment to Dark Rock references the Deed of Mineral
10 Interests which as mentioned is unambiguous. JX KK.

11 Third, the allegation contained in Pace's complaint in the
12 KC Action about Pace's interests in Section 17 is far too
13 general to impart a duty of inquiry upon MOC. Indeed, claims of
14 equitable interests in connection with pending litigation
15 generally have to be the subject of a lis pendens. *See, Tleel*,
16 876 F.2d at 772. The court has not been directed to a lis
17 pendens being recorded in the KC Action. Nevertheless, it is
18 beyond dispute that MOC did investigate the state of title of
19 mineral interests in Section 17 while the KC Action was pending.
20 Thus, it is not MOC lack of diligence that is the issue. Rather,
21 what specifically did MOC fail to consider when researching the
22 mineral interests? Pace does not say other than it had an
23 unrecorded lease.

24 Fourth, Mr. Clement's and Ms. Hicks' reliance on the "list"
25 prepared by MOC's counsel does not evidence a lack of due
26 diligence. Subsequent purchasers may rely on record title even
27 if they use agents for searches. *Triple A Mgmt.*, 69 Cal. App.
28 4th at 530, 81 Cal. Rptr. 2d at 675. Here, Ralph Black signed

1 the Deed of Mineral Interest "dealing with his sole and separate
2 property" in September 2007. The deed was not recorded until
3 March 2012. JX II. Less than a year later, on May 3, 2013, the
4 assignment of Mineral and Royalty Interests from Pace
5 Diversified to Dark Rock is recorded. JX KK. A year later, in
6 June 2014, there is recorded the Affidavit of Real Property of
7 Small Value, which Ralph Black signed as trustee and identifies
8 the Black heirs. JX LL, MM. Pace's Deed of Mineral Interest was
9 signed by Ralph Black in his individual capacity even though he
10 was apparently a trustee at the time.

11 Fifth, the Probate Code sections Pace relies upon do not
12 change the result. PC § 18100 protects a third party dealing
13 with a trustee who may be exceeding his powers and pays valuable
14 consideration without actual knowledge the trustee is exceeding
15 or improperly exercising powers. PC § 18102 provides that if a
16 third party is protected if the party pays valuable
17 consideration in good faith and enters into a transaction with a
18 trustee, who is no longer a trustee. Here, Duane Roach
19 "understood" he was dealing with Ralph Black as "owner" of
20 Madelon Black's interest but the recorded Deed of Mineral
21 Interest says otherwise. JX MM. This is not a situation where
22 Ralph Black may have exceeded his power when Pace purportedly
23 acquired the interest. Even if Ralph Black had the power (a fact
24 not persuasively proven except by the Affidavit of Real Property
25 of Minimal Value), nothing in the Probate Code, the authority
26 presented by the parties, or the caselaw reviewed by the court

27 ///

28 ///

1 suggest that these Probate Code provisions preempt California's
2 recording laws.¹²

3 In sum, the court finds Maverick leased the Black interest
4 for consideration and did not have notice of Pace's prior
5 unrecorded lease addendum with Madelon E. Black or without
6 notice of the purchase of the Section 17 mineral interests from
7 Ralph M. Black, executor of the estate of Madelon Black.
8 Maverick assigned the leases to MOC and MOC holds legal title to
9 the Black interest.

10 **B.**

11 The Braucht interest is 0.583333% of the oil and gas rights
12 in Section 17. SF ¶ 86. But the interest in dispute is that of
13 Braucht heir, Rebecca Cramer, who had a 0.194444% interest in
14 Section 17. The interest excludes the east half of the southeast
15 quarter of Section 17. JX GGG.

16 Pace claims a prior interest in Rebecca Cramer's portion of
17 the "Braucht interest" on two grounds. First, Pace claims that
18 Stephen B. Braucht (Rebecca Cramer's father) signed the Pace-
19 Olcese Addendum and the signature was recorded. Thereafter,
20 Stephen Braucht and his spouse, Sandra Braucht, accepted royalty
21 payments. Even after Stephen Braucht's death in July 2010,
22 Sandra Braucht accepted royalties. SF ¶ 91; JPO 39:3-19. Pace
23 asserts that neither Mr. Clement nor Ms. Hicks independently
24 verified the state of title.¹³ Pace goes on to say that Ms. Hicks

25 ///

26 ///

27 ¹² Pace did pay royalties to the Black heirs. That is consistent with
28 Pace honoring its agreement even though it was unrecorded under CC § 1217.

¹³ The court has already discussed that matter above.

1 learned from Sandra F. Braucht that she believed she was
2 receiving royalties.¹⁴ PX 56.

3 The second basis for Pace's claim to priority is that
4 Rebecca Cramer signed a ratification as to her interest in favor
5 of Pace on June 27, 2019. PX 44; SF ¶ 99. Pace claims that, when
6 the ratification was signed by Ms. Cramer, this adversary
7 proceeding had been pending for some time. So, Pace goes to say,
8 that it was clear to MOC the extent of Pace's claims, including
9 claims to Rebecca Cramer's interest.

10 MOC contends otherwise. Though Stephen Braucht's signature
11 to the Pace-Olcese Lease Addendum was recorded, he and his
12 sister, Patricia Braucht, held their interests as joint tenants
13 with the right of survivorship. Patricia Braucht did not sign
14 the lease addendum. SF ¶ 92.

15 MOC goes on to say that Stephen B. Braucht died in 2010
16 leaving Patricia as the lone surviving joint tenant. Though she
17 accepted royalties, MOC contends that does not ratify what she
18 did not own. Thus, MOC concludes the recordation of the addendum
19 including Stephen Braucht's signature did not affect Patricia
20 Braucht's rights while Stephen Braucht was alive. Patricia did
21 own all of the rights until Stephen passed away. So, MOC was not
22 on inquiry or constructive notice of Pace's priority to the
23 Rebecca Cramer interest.

24 Pace's ratification signed by Rebecca Cramer, MOC notes,
25 was on the same day she signed a Quitclaim, Assignment and Bill
26 of Sale favoring MOC. SF ¶ 100; JX GGG. It was not until August

27 ¹⁴ Ms. Hicks also testified that she knew Pace was the operator of
28 Section 17, so payment of royalties was not inconsistent with possession of
Section 17. TT 237:19-238:22.

1 2019 that MOC received a copy of the ratification signed by
2 Rebecca Cramer in favor of Pace. By then, MOC had recorded the
3 documents that Ms. Cramer had signed.

4 The court is not persuaded that the signature of Stephen B.
5 Braucht on the Pace-Olcese Lease Addendum put MOC on inquiry
6 notice. California's joint tenancy law does not support Pace's
7 position. Pace argues that when Stephen and Patricia transferred
8 their interest in a portion of Section 17 by mineral deed in
9 2006 to Stephen Braucht and his wife, Sandra Braucht, it
10 terminated the entire joint tenancy. JX BB; SF ¶ 90. Pace argues
11 that the joint tenancy was terminated even as to property not
12 included in the deed.

13 First, there is no evidence of a written agreement signed
14 by all the joint tenants severing the tenancy. See, CC § 683.2.
15 Further, CC § 683.2 discusses severance of a joint tenancy
16 interest not "part" of a joint tenancy interest. Stephen B.
17 Braucht's execution of the Pace-Olcese Addendum did not evidence
18 an intent to sever the tenancy because it was only a portion of
19 the interests that were described in the 2006 mineral deed.

20 Second, Pace's authorities are distinguishable. *Re v. Re*,
21 39 Cal. App 4th 91, 96-97, 46 Cal. Rptr. 2d 62, 66-67 (1995)
22 (severance in identified parcels is found when two of the three
23 joint tenants sign grant deeds to one another severing the
24 tenancy with the third joint tenant; third joint tenant has a
25 remaining one-third interest as a tenant in common with the
26 severing joint tenants); *Estate of Blair*, 199 Cal. App. 3rd 161,
27 168, 244 Cal. Rptr. 627, 631 (1988) (reversing trial court
28 finding of a transmutation of joint tenancy property to

1 community property when one spouse dies during the dissolution
2 proceeding).

3 In short, neither the Mineral Deed nor the Pace-Olcese
4 Addendum signed by Stephen B. Braucht severed the entirety of
5 the joint tenancy interest.

6 That said, Pace's interest in the portion of the
7 Braucht owned by Rebecca Cramer is superior and has priority to
8 the interest of MOC.

9 First, MOC did not acquire the Cramer interest until June
10 27, 2019. By then, this action was filed, Ms. Hicks' and Mr.
11 Clement's depositions had been taken, and MOC had available
12 records of Pace's royalty payment being made through the Monthly
13 Operating Reports filed by Pace Diversified. TT 233:8-17, 268:1-
14 8, 137:3-138:21, 168:4-169:6.

15 Though MOC argues that Ms. Hicks was not told about Cramer
16 already having leased the interest, did she ask? TT 224:12-16.
17 In light of the status of this litigation at the time, she
18 should have asked.¹⁵ See, CC § 19; *Kabayan*, 190 B.R. at 395;
19 *Beverly Hills National Bank & Trust Co. v. Seres*, 76 Cal. App.
20 2d at 255, 172 P.2d at 894. Further, even Rebecca Cramer
21 informed Ms. Hicks of her belief that she and her siblings were
22 receiving royalties in January of 2019. PX 85; *First Fid. Thrift*
23 *& Loan Ass'n.*, 60 Cal. App. 4th at 1443, 71 Cal. Rptr. 2d at
24 301.

25 Also, MOC abandoned its earlier claim that Sandra's
26 Braucht's interests were those of the remaining siblings. MOC

27 ¹⁵ There was testimony by Mr. Clement and Ms. Hicks that no independent
28 analysis was done on the Cramer interest which seems very late in the process
for experienced landmen. TT 232:17-233:1, 233:8-21.

1 learned later that those interests were vested in Patricia
2 Braucht.

3 Finally, the ratification signed by Rebecca Cramer dated
4 June 27, 2019, which MOC admits they saw in August 2019,
5 ratifies Pace Diversified as a lessee under the documents with
6 other recordings referenced. PX 44. The ratification document
7 signed by Rebecca Cramer in favor of Pace shows the pending
8 interest was leased, assigned, and ratified by the then current
9 heirs.

10 In sum, the court finds that Patricia Cramer ratified the
11 lease interest in favor of Pace. The court further finds that
12 MOC had inquiry notice of Ms. Cramer's ratification of Pace's
13 Olcese lease and had MOC pursued investigation of the interest
14 it would have learned of Pace's interest.

15 **C.**

16 The Solomon interest represents 3.125% of the oil and gas
17 rights involved in the dispute over Section 17. SF ¶¶ 38-41.
18 Pace Diversified assigned its interest to Dark Rock. JX KK; SF
19 ¶ 34.

20 For our purposes here, the interest traces back to Jean S.
21 Solomon, the Olcese heir with rights to Section 17. SF ¶¶ 13-16,
22 38-41. William W. Solomon, Jr. ("Bill")¹⁶ was appointed executor
23 of Jean Solomon's estate on January 30, 1997 and had authority
24 to act under the Independent Administration of Estates Act. JX
25 X. A decree of final distribution was recorded on April 16,
26 2013. *Id.*

27 _____
28 ¹⁶ References to Mr. Solomon as "Bill" is used to simplify the
narrative. No disrespect is intended.

1 Pace contends it relied on Bill having authority and
2 holding himself out to be the executor and personal
3 representative for the Jean Solomon estate. TT 83:5-16, 83:26-
4 18, 86:27-87:3. Pace Western (Pace's predecessor) sent Bill a
5 signature page for the original Olcese lease which was returned
6 to Pace Western signed in Bill's capacity as executor. However,
7 the document is neither notarized nor recorded. PX 7, 8. After
8 Pace Western assigned the lease to Pace Diversified, royalties
9 were paid until 2004 when Bill sold an Overriding Royalty
10 interest to Pace.¹⁷ PX 12, 13; SF ¶ 44. Bill signed an assignment
11 of royalty to Pace in his individual capacity and did not state
12 it was on behalf of the Jean Solomon estate. The assignment was
13 recorded July 9, 2012. JX JJ.

14 When Pace assigned its interests to Dark Rock, the
15 assignment referenced the recordation number of the assignment
16 of royalty that Bill signed. JX KK. There is no dispute that MOC
17 had notice of Bill's assignment to Pace. JX JJ.

18 Pace further contends that MOC was on inquiry notice
19 because of the pending KC Action when it began to acquire the
20 Solomon interests. Maverick's Ms. Hicks did not inquire whether
21 the Solomon interest was subject to the Olcese lease or whether
22 Bill or his siblings were receiving royalties from Pace. SF
23 ¶ 50. Pace further contends there was no independent title
24 ///

25
26 ¹⁷ An overriding royalty is a share of either production or revenue from
27 production (free of the cost of production) carved out of a lessee's interest
28 under an oil and gas lease. Overriding royalty interests are often used to
compensate those who have helped structure a drilling venture. An overriding
royalty interest ends when the underlying lease terminates. *Black's Law
Dictionary* (10th ed. 2014).

1 review conducted by Ms. Hicks or Mr. Clement.¹⁸ Pace argues that
2 Mr. Clement had a previous history with Bill Solomon and the
3 Solomon siblings because those parties were receiving royalties
4 from MOC in connection with MOC's operations adjacent to Section
5 17.

6 On the other hand, MOC argues that it purchased the Section
7 17 mineral interests of each of the Solomon siblings and
8 recorded quit claim deeds in December of 2016. SF ¶ 51; JX PP,
9 RR, SS; TT 153:11-154:14. MOC asserts that Mr. Clement claimed
10 in his testimony that at no time before MOC purchased the
11 interests did Mr. Clement have information Pace had leased or
12 purchased the Solomon interests. Mr. Clement went on to testify
13 that ordinarily oil and gas interest holders would mention such
14 issues.¹⁹ TT 149:14-151:20.

15 MOC argues that the Solomon siblings' signatures on the
16 Pace-Olcese lease was not recorded.

17 Finally, MOC argues that the assignment of royalty interest
18 differs from a fee interest. So, any documentation in the record
19 dealing with a transfer of a royalty interest would not mean
20 anything to Mr. Clement since it involves something different
21 than the fee interest which was the subject of MOC's purported
22 acquisition. TT 151:21-153:7.

23 The court finds that Pace's interest in the Solomon heirs'
24 interest has priority over MOC's claims.

25 ///

26 ¹⁸ The court has previously discussed these issues in connection with
27 prior interests.

28 ¹⁹ There is some support for Mr. Clement's testimony on this issue since
he also testified that Bill inquired why there was interest in royalties
concerning the Pace interests.

1 First, three to four years before MOC started its
2 acquisition efforts, the Decree of Final Distribution for the
3 Jean S. Solomon estate was recorded. That decree set forth that
4 Bill was the executor, and that the estate was administered
5 under the Independent Administration of Estates Act. Therefore,
6 transactions Bill may have entered into did not require court
7 approval in all cases. It is also not clear from the record when
8 Bill was discharged as executor. PC §§ 11753, 12250(b), & 12252.

9 Second, the fact that Bill's signature on the Olcese lease
10 was unrecorded is somewhat problematic. Except, MOC does not
11 dispute that Jean Solomon is the Olcese heir from which the
12 contested Solomon interests arose. The Decree of Final
13 Distribution was part of the record and critical to trace the
14 resulting interest holders.

15 Third, Mr. Clement's testimony and evidence related to his
16 communications with Bill indicate MOC may have been on actual
17 notice of Pace's interests in the Solomon mineral rights in
18 Section 17 or put MOC on inquiry notice which required further
19 follow-up. Notably, MOC's deeds contained language giving MOC
20 the right to collect past royalties owed. MOC then knew of
21 Pace's interests and contracted to collect past royalties owed
22 the Solomons. PX 57.

23 Further proof is Mr. Clement's letter to Bill dated
24 November 11, 2016. PX 58. It states that the enclosed "agreement
25 covers your mineral interests in the acreage Pace Diversified
26 has under lease . . ." *Id.* On its face, Mr. Clement's letter
27 indicates MOC knew of Pace's interests. A landman with
28 ///

1 Mr. Clement's experience should know the difference between
2 interests "under lease" and not.

3 In response, MOC attempts to "walk back" Mr. Clement's
4 statements. At trial, Mr. Clement testified that he did not mean
5 Pace had the contested interests under lease. TT 182:11-183:28.
6 The court finds Mr. Clement's testimony unpersuasive and lacking
7 credibility on that point. Mr. Clement's statement in his letter
8 to Bill is consistent with previous email correspondence with
9 Bill where Clement references the ongoing Pace litigation.

10 These facts establish MOC's knowledge beyond the record
11 that Pace claimed priority in the Solomon interests. Further
12 inquiry of the Solomon siblings should have confirmed this fact.

13 Accordingly, the court finds that Pace Diversified and
14 through assignment, Dark Rock's claims to the Solomon interests
15 have priority over the claims of MOC.

16 **D.**

17 The Stewart interest is defined as 0.858333% of the oil and
18 gas rights of Section 17.

19 The parties agree that the oil and gas rights involved with
20 the Stewart interest trace back to Mabel B. Preston. The Decree
21 of Final Distribution for Mabel B. Preston's Estate dated
22 December 13, 1994 and recorded on January 23, 1995, provided
23 that the mineral interests would be divided three ways: (i) one-
24 third to Mabel Preston's daughter, Greta M. Stewart
25 individually; (ii) one-third to Greta M. Stewart as trustee for
26 the benefit of Susan Lynn Thompson (née Stewart) until she
27 reached 40 years of age, then it would vest in Ms. Thompson (she
28 turned 40 on April 3, 2003); (iii) one-third to Greta M. Stewart

1 as trustee for the benefit of Rosalyn Stewart until Rosalyn
2 reached 40 years of age when it would vest (she turned 40 on
3 December 27, 2005). SF ¶¶ 55-56; JX W.

4 Pace claims it has priority to the Stewart interest for
5 three reasons. First, Greta M. Stewart signed an addendum to the
6 Olcese lease in September 2004.²⁰

7 Second, Pace claims that notwithstanding the terms of the
8 trust, Greta M. Stewart never conveyed to Susan Lynn Thompson
9 nor Rosalyn Stewart their respective one-third interests. SF
10 ¶¶ 58, 60. Since the interests were never legally conveyed to
11 Susan Lynn Thompson or Rosalyn Stewart, Pace contends that in
12 April 2014 Greta M. Stewart signed a mineral deed granting the
13 entire mineral interest to Pace.²¹ PX 19.

14 Third, Pace repeats the argument that the pending KC Action
15 put MOC on notice of their interest in the entirety of Section
16 17. Also, Pace repeats that Mr. Clement and Ms. Hicks did not
17 conduct a sufficient inquiry into the interests Pace claims.

18 MOC claims its interests are superior because an inquiry
19 into the state of record title would not reflect a recorded
20 signature of Greta M. Stewart on either the Olcese Lease
21 Addendum or the 2014 Mineral Deed. Instead, MOC obtained
22 separate Quitclaims, Assignments and Bills of Sale from Greta M.
23 Stewart, a married person, as separate property in November
24 2016. JX OO. The same form of document was signed by Susan Lynn
25 ///

26 ²⁰ Greta M. Stewart also signed the addendum again in September 2008.
27 These addenda were not recorded. PX 14; SF ¶ 61.

28 ²¹ The mineral deed was not recorded. Duane Roach testified that Kern
County would not accept the form of notarial acknowledgement on the mineral
deed. TT 94:16-95:16, 97:23-98:18.

1 Thompson in December 2016 and Rosalyn Stewart in January 2017.²²
2 JX QQ, TT; SF ¶ 4.

3 Second, MOC also claims in October 2018 they recorded yet
4 another Quitclaim, Assignment and Bill of Sale signed by Greta
5 Stewart. JX DDD. In this Quitclaim, Greta Stewart acknowledges
6 that she had not previously conveyed to either of her daughters
7 (Susan Lynn Thompson or Rosalyn Stewart) legal title to their
8 beneficial interest in the mineral rights. *Id.*

9 Third, MOC also claims that neither addendum to the Olcese
10 lease signed by Greta M. Stewart was recorded therefore, there
11 is nothing that an inquiry into the state of title would have
12 revealed to MOC about the interests Pace claims.

13 Fourth, MOC argues that when Susan Lynn Thompson, Rosalyn
14 Stewart and Greta M. Stewart signed the Quitclaims, Assignments
15 and Bills of Sale in favor of Mineral Acquisition Group, Ms.
16 Thompson and Ms. Stewart had authority to transfer their
17 beneficial interest to Mineral Acquisition Group who then
18 transferred the interests to MOC. So, MOC continues, when the
19 transfers of those interests to Mineral Acquisition Group
20 occurred, the transferors had authority to transfer the legal
21 interest (in the case of Greta M. Stewart) and the beneficial
22 interests (in the cases of Ms. Thompson and Ms. Rosalyn
23 Stewart). Both Susan Lynn Thompson and Rosalyn Stewart had
24 reached the age of 40 by the time their transfers to Mineral
25 Acquisition Group occurred.

26 ²² The actual entity that acquired these interests was another party,
27 Mineral Acquisition Group. It is stipulated between the parties that Mineral
28 Acquisition Group worked with Maverick in negotiating with the Stewart heirs.
SF ¶ 4. Mineral Acquisition Group transferred its interests acquired from the
Stewart heirs and Greta M. Stewart in June of 2017. JX VV.

1 The courts finds that MOC has priority over Pace as to the
2 Stewart interests.

3 First, there is no dispute that neither Olcese lease
4 addenda containing the signature of Greta M. Stewart was
5 recorded. Nor was the Mineral Deed. The court recognizes that
6 Pace had difficulty recording the Mineral Deed, but that
7 difficulty is not to be weighed against MOC since it was
8 entitled to rely on the state of record title.

9 Second, Pace points to no ambiguity in the record that
10 would put MOC on further inquiry notice concerning Pace's claims
11 to the Stewart interests.

12 Third, though Pace claims that Greta M. Stewart represented
13 that she had authority to transfer all of the Stewart rights
14 before signing the Mineral Deed. TT 100:18-20; PX 17. Actual
15 correspondence from Greta Stewart is ambiguous in that it refers
16 both to her interest and that she was receiving income as a
17 trustee. PX 17. That is consistent with MOC's theory that Susan
18 Lynn Thompson and Rosalyn Stewart's beneficial interests were
19 still held by Greta M. Stewart as trustee.

20 Fourth, when Susan Thompson and Rosalyn Stewart (and Greta
21 M. Stewart) first transferred their mineral interests to Mineral
22 Acquisition Group, the condition to transfer the mineral rights
23 to Ms. Thompson and Ms. Rosalyn Stewart (attainment of age 40)
24 had long since occurred. They could compel Greta Stewart to
25 transfer the interests. *See, Milkes v. Smith*, 91 Cal. App. 2d
26 79, 81-82, 204 P.2d 419, 420 (1949).²³

27 ²³ MOC relies on *Walgren v. Dolan*, 226 Cal. App. 3d 572, 276 Cal. Rptr.
28

Accordingly, the court finds that since the prior purported transfers of the Stewart interests to Pace were unrecorded, Pace did not hold a prior interest. If MOC was held to inquiry notice, the court finds that inquiry beyond the state of record title was unnecessary. The court has not been provided evidence of an ambiguity in the state of the record or qualification that would suggest that MOC would have any further duty to inquire beyond the record.²⁴

E.

The Simonson/Stanford interests are 6.25% of the oil and gas rights of Section 17. SF ¶¶ 25-26. Pace transferred its interest in these rights to Dark Rock by written assignment. JX KK. The assignment to Dark Rock was recorded on April 30, 2013.

The Simonson/Stanford interests trace back to Elsa Simonson who held title to the Simonson/Stanford interests under the June 26, 1936 Decree of Partial Distribution of the Estate of Louis V. Olcese. SF ¶¶ 13-16, 25-26; JX G. Doris E. Alexander was the successor trustee of the Elsa A. Simonson Testamentary Trust. JX DD.

Pace makes four arguments supporting its position that Pace Diversified and Dark Rock have a priority interest in the

554 (1990), in arguing the transferability of the beneficial interest. But in *Walgren*, an *inter vivos* trust was involved and the remaining beneficiary there had absolute control over the trust property and complete power to direct the trustee to purchase or sell realty. *Id.* at 576, 276 Cal. Rptr. at 556. Those facts are not present here.

²⁴ Pace's arguments that the language in the Quitclaims, Assignments and Bills of Sale reserving to the grantors the potentially collected unpaid royalty interest put MOC on notice of the interests is unpersuasive concerning the Stewart interests. There is no dispute that Greta Stewart was the trustee of the Mabel Preston estate, and that Susan Lynn Thompson and Rosalyn Stewart were beneficiaries. Since those beneficial interests could be transferred, there is nothing inconsistent in those granting documents containing those provisions.

1 Simonson/Stanford interests. First, Pace disputes that the
2 grantor of the lease by which MOC claims an interest, Leland
3 Stanford University ("Stanford"), was granted the Simonson
4 interest. The source of dispute is that the final order issued
5 by the Merced County Superior Court settling the account of the
6 Simonson Testamentary Trust directed Ms. Alexander to transfer
7 the balance of the estate including the disputed interests to
8 Stanford.²⁵ JX DD. Pace also contends that it is undisputed there
9 is no recorded document by which Ms. Alexander as trustee of the
10 Simonson Testamentary Trust transferred the mineral interests to
11 Stanford.²⁶ SF ¶ 30.

12 Second, Pace argues that its actions were consistent with
13 the lease relationship between it and Ms. Alexander as trustee.
14 Pace points to the fact that Ms. Alexander signed the Olcese
15 lease with Pace's predecessor, Pace Western Corporation.²⁷ PX 1.
16 Pace also notes that it paid royalties to Ms. Alexander as
17 trustee until mid-2003 when she no longer accepted them and
18 directed Pace to pay Stanford. PX 3. Mr. Roach testified at
19 trial that he had no reason to believe Ms. Alexander was
20 exceeding her authority by leasing the interests to Pace or her
21 collection of royalty payments.²⁸ TT 105:24-106:17.

22 ///

24 ²⁵ The Order Settling Account was recorded in June 2007 even though the
order was entered nine years earlier. JX DD.

25 ²⁶ Perplexing as it is for a prestigious, private university with a
26 prestigious law school and, presumably, a well-represented Board of Trustees
to rely on unrecorded documents to assert a mineral interest, that issue is
27 not before the court. The court's task here is to determine priority among
the litigants. Stanford University is not one of them.

27 ²⁷ The lease with that signature was never recorded.

28 ²⁸ It would seem, however, that when Ms. Alexander refused the payments,
Pace had reason to question her authority.

1 Third, Pace contends that other recorded documents in the
2 chain of title put MOC on notice of Pace's lease interest in the
3 Simonson/Stanford interests. Pace claims that the written and
4 recorded assignment to Dark Rock references in its preamble two
5 previously recorded documents.²⁹ JX KK. The first, was the
6 assignment of the oil and gas lease from the Olcese heirs to
7 Pace Western Corporation. JX Z. The second is the 2004 addendum
8 to the Olcese lease.³⁰ JX AA.

9 Pace also points to the substantive provisions of the Dark
10 Rock assignment. It lists several interests. Item 6 is
11 identified as the 6.25% interest at issue here. JX KK. However,
12 the reference to the prerecorded document in the Dark Rock
13 assignment is to the court order appointing Ms. Alexander as
14 trustee. Mineral interests are not mentioned.

15 Pace relies on *Gates Rubber Company v. Ulman*, 214 Cal. App.
16 3d. at 365, 262 Cal. Rptr. at 635-36, to argue that this
17 information put MOC on inquiry notice. Therefore, if further
18 study was pursued, MOC would have learned of Pace's claimed
19 interests. But *Gates* does not go as far as Pace claims. There,
20 the Court of Appeal affirmed a trial court finding that a
21 subsequent purchaser had no notice of an unrecorded option to
22 purchase in favor of a lessee. The court noted there was no
23 reference to the unrecorded option to purchase in the recorded
24 documents and the purchaser was allowed to rely on the recorded
25 documents. Here the documents that were referenced in the Dark
26 Rock assignment do not directly relate to mineral interests

27 ²⁹ MOC admits it knew of the Pace to Dark Rock assignment. SF ¶¶ 33-34.

28 ³⁰ There is no recorded signature of Doris E. Alexander as trustee on
the referenced documents in the preamble of the Dark Rock assignment.

1 except the reference to the assignment of the oil and gas lease
2 to Pace Western Corporation. But it is undisputed that Ms.
3 Alexander's signature is not recorded.

4 Fourth, Pace argues that the pending KC Action and the
5 purported lack of due diligence of Mr. Clement and Ms. Hicks
6 suggest MOC should be found to have had knowledge of Pace's
7 interest. The court has already dealt with those arguments.

8 MOC makes two arguments why it should have priority. First,
9 MOC argues that Ms. Alexander's signature on the Pace-Olcese
10 lease was not recorded. JX Y. So, nothing in the records
11 relating to the Pace-Olcese lease suggests that Ms. Alexander as
12 trustee was a party to the lease.

13 Second, MOC claims that it obtained a lease from Stanford
14 by assignment from Maverick. Maverick obtained the lease from
15 Stanford which was recorded before Pace had a record interest.³¹
16 MOC points to Ms. Hicks' testimony that she contacted Mr.
17 Lindblom at Stanford. Mr. Lindblom previously dealt with Ms.
18 Hicks concerning mineral leases with Stanford. TT 212:7-14,
19 212:20-214:23; DX 628.

20 The court finds that MOC has a prior interest in the
21 Simonson/Stanford interest.

22 First, there is no evidence in the recorded documents that
23 the Pace-Olcese lease or any addenda were recorded with Ms.
24 Alexander's signature as trustee. The Pace-Dark Rock assignment
25 did not contain sufficient information putting MOC on further
26 inquiry notice.

27
28 ³¹ The Stanford to Maverick lease was recorded January 23, 2017.
Maverick's lease assignment to MOC was recorded June 13, 2017. JX UU, WW.

1 Second, there are no facts outside the record that were
2 known by MOC that should have led to further inquiry. Mr. Roach
3 testified that in the 2003-2005 timeframe, royalty payments made
4 to Ms. Alexander were uncashed and eventually Pace was told to
5 pay Stanford. PX 4. The parties have stipulated that Pace never
6 paid royalties to Stanford. SF ¶ 32. Though Stanford was,
7 according to Mr. Roach, uncooperative when he inquired that does
8 not change the fact that Stanford never leased any interests to
9 Pace. TT 111:10-112:1.

10 Even if Ms. Hicks inquired if Stanford was receiving
11 royalty payments from Pace, the response would have been
12 negative. The parties stipulated Pace was not making payments.

13 Though it is unclear how Stanford obtained title, there is
14 no recorded documentation showing Pace having a prior interest.
15 So as between Pace-Dark Rock and MOC, MOC has priority.

16 The court therefore finds that Maverick leased the Stanford
17 interest for consideration and did not have notice of Pace's
18 prior undated and unrecorded lease with Ms. Alexander as
19 trustee. Maverick recorded a short form notice of its lease with
20 Stanford in the official records and Maverick assigned the lease
21 to MOC.

22 23 IV

24 For the foregoing reasons the court FINDS and DECLARES as
25 follows:

26 1. MOC has a prior interest in the Black interest in the
27 oil and gas rights of Section 17. The interest has priority over
28 that of Pace Diversified and Dark Rock.

1 2. Pace Diversified has a prior interest in the Braucht-
2 Cramer interest in the oil and gas rights of Section 17. The
3 interest has priority over any interest of MacPherson Oil
4 Company.

5 3. Pace Diversified, and through assignment Dark Rock,
6 has prior claims to the Solomon interests. Those claims have
7 priority over the claims of MOC.

8 4. MOC has a prior interest in the Stewart interest in
9 the oil and gas rights of Section 17. That interest has priority
10 over the interest of Pace Diversified.


11 5. MOC has a prior interest in the Simonson/Stanford
12 interest in the oil and gas rights of Section 17. MOC has a
13 priority interest over those claimed by Pace Diversified and
14 Dark Rock.

15 Counsel for MOC shall prepare a conforming ruling. Counsel
16 for Pace Diversified and Dark Rock shall approve the form of
17 ruling. The ruling shall then be submitted to the court for
18 signature.

19 IT IS ORDERED that the court will hold a scheduling
20 conference at the Bakersfield session of this court on
21 January 4, 2023, at 11:00 a.m. The parties shall be prepared to
22 discuss further scheduling for the accounting portion of this
23 litigation.

24
25 **Dated: Dec 02, 2022**

By the Court

26
27 
28 **René Lastreto II, Judge**
United States Bankruptcy Court

**Instructions to Clerk of Court
Service List - Not Part of Order/Judgment**

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked ____, via the U.S. mail.

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